(230)

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1481 of 2000

Ku. Thanwarin Kaivart and others

-Versus-

State of Chhattisgarh and others

Post for order on 2nd January, 2006.

Sd/-
Satish K. Agnihotri
Judge

Sman Verma 21.12.2006 Counsel for petitioners

(231)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1481 of 2000

Petitioners

1. Ku. Thanwarin Kaivart, aged about 48 years, daughter of Shri Sawal Kaivart, by occupation – Superintendant Balika Ashram Sameli, district- Baster (M.P.).
2. R.V. Rao, aged about 57 years, Son of Shri R. Rammanya, by occupation Accountant Mata Rukmani Seva Sansthan, Dirmrapal, District Bastar (C.G.).
3. Smt. Kamlesh, aged about 45 years, daughter of Laxman Singh, by occupation Teacher Kanya Ashram, Mutanpal, District Bastar (C.G.).
4. Basant Kumar Saraf, aged about 48 years, Son of Bhuwanlal Saraf, by occupation Teacher Kanya Ashram Orchha, District Bastar (C.G.).
5. Smt. Rajeshwari Baithara, aged about 48 years, Wife of Shri Somani Babu, by occupation Assistant Teacher, Kanya Ashram Chhattisgarh, District Bastar (C.G.).
6. Smt. Dhanlaxmi Kurup, Wife of Shri T.V. Mohan, by occupation Assistant Teacher Kanya Ashram Bastar, District Bastar (C.G.).
7. Om Prakash Ogle, Son of Shri Malhar Rao, aged about 41 years, by occupation Assistant Teacher, Kanya Ashram Dhurli Dantewada, District Dantewada (C.G.).
8. Rajendra Prasad Sah, aged about 37 years, Son of Shri Dashrath Prasad Sah, by occupation Teacher in Balak Ashram Dhurli,
Dantewada, District Bastar (C.G.).
9. Smt. Saraswati Sao, aged about 48 years, Wife of Shri D.K. Sao, by occupation Superintendent Kanya Ashram Orchha, District Bastar (C.G.).
10. Ku. Savitri Pandey, aged about 45 years, Daughter of late Shri B.J. Pandey, Teacher in Mahatma Gandhi Kanya Ashram Chhattisgarh, District Bastar (C.G.).
11. Smt. Kamal Jain, aged about 49 years, Wife of Shri Ramesh Jain, by occupation Teacher Kanya Ashram Cheiurgaon, District Bastar (C.G.).
12. Anil Basant Rao Dhote, aged about 43 years, Son of Shri Basant Rao, by occupation Teacher in Kanya Ashram

232

Dhanora, District Bastar (C.G.).

13. Smt. Satwanti Bhamra, aged about 50 years, Wife of Shri Gurudeo Bharma, by occupation Balwadi Teacher Kanya Ashram Charama, District Bastar (C.G.).
14. Ku. Malti Yadav, aged about 47 years, Daughter of Shri R.C. Yadav, Superintendent Kanya Ashram Mutanpal, District Bastar (C.G.).
15. Shiv Chandra Sah, aged about 36 years, Son of Shri Ghasai Sah Sanchalak, Kanya Ashram Dhimrapal, District Bastar (C.G.).
16. Smt. Kasturi Soni, aged about 48 years, Wife of Shri Basant Saraf, by occupation Assistant Teacher Kanya Ashram Orchha, District Bastar (C.G.).
17. Ku. Laxmi Uddey, aged about 30 years, Daughter of Shri Jogiram Uddey, by occupation Teacher, Kanya Ashram Dhanora, District Dantewada (C.G.).
18. Kaoshal Kishore Pathak, aged about 44 years, Son of Shri R.S. Pathak, by occupation Teacher Middle School Dimrapal, District Bastar (C.G.).
19. Shri Chingduram Baghel, aged about 29 years, Son of Shri Laxman Ram, by occupation Lower Division Teacher, Balak Ashram, Bastanar, District Bastar (C.G.).
20. Smt. P. Jyoti Laxmi Naidu, aged about 30 years, Daughter of Shri R.V. Rao, by occupation Lower Division Teacher Kanya Ashram Tongapal, District Bastar (C.G.).
21. Smt. Kamla Yadav, aged about 49 years, Wife of Shri Madan Yadav, by occupation Cook, Kanya Ashram Charama, District Bastar (C.G.).
22. Smt. Keshawati Patra, aged about 54 years, Dauther of Shri Dayaram, by occupation Midwife Mata Rukmani Kanya Ashram Dimrapal, District Bastar (C.G.).
23. Smt. Maitri Beko Kashyap, aged about 27 years, Wife of Shri Beko Kosa, by occupation Midwife, Kanya Ashram Barsoor, District Dantewada (C.G.).
24. Ku. Rajmati Dande, aged about 28 years, Daughter of Shri Laxman Bande, by occupation Cook Kanya Ashram Barsoor, District Dantewada (C.G.).

(233)

25. Smt. Meena Yadav, aged about 25 years, Daughter of Shri Rajdeo Yadav, by occupation Assistant Teacher, Kanya Ashram Bhusaras, District Bastar (C.G.).
26. Shri Bhadraram Kashyap, aged about 22 years, Son of Shri Sukhdeo Kashyap, by occupation Lower Division Teacher, Kanya Ashram Kutru, District Bastar (C.G.).
27. Smt. Suryakanta Yadav, aged about 29 years, Daughter of Shri K. Sammaiyya, by occupation Lower Division Teacher, Kanya Ashram Bhusavas, District Dantewada (C.G.).
28. Smt. Ganganag, aged about 27 years, Daughter of Shri Somsai Nag, by occupation Assistant Teacher, Kanya Ashram Mutanpal, District Bastar (C.G.).
29. Ku. Dropadi Durgam, aged about 28 years, Daughter of Naggaya Durgam, by occupation Assistant Teacher Kanya Ashram Bhusavas, District Bastar (C.G.).
30. Smt. Falgauni Nag, aged about 27 years, Daughter of Shri Vishwanth Nag, by occupation Assistant Teacher Kanya Ashram Badekilepal, District Bastar (C.G.).
31. Smt. Lakhan Dei Kashyap, aged about 28 years, Daughter of Shri Thibru Kashyap, by occupation Assistant Teacher Kanya Ashram Jangla, District Bastar (C.G.).
32. Smt. Shashibala Jumar, aged about 28 years, Daughter of Shri Sammaiyya Jumar, by occupation Assistant Teachr, Kanya Ashram Dhanora, District Dantewada (C.G.).
33. Kawal Sai Nag, aged about 29 yeears, Son of Shri Faguram Nag, Assistant Teacher, Kanya Ashram Kutru, District Dantewada (C.G.).

Versus

Respondents

1. State of Chhattisgarh through the Secretary, Scheduled Caste and Scheduled Tribes and Backward Classes Welfare Department, D.K.Bhawan, Raipur (C.G.)
2. Collector Tribal Department, District Bastar, Jagdalpur (C.G.).
3. Mata Rukhmani Seva Sansthan, Dimarapal, District Bastar (C.G.).
4. Secretary, Mata Rukhmani Seva Sansthan, Dimrapal, District Bastar

(234)

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri, J.**

Mr. K. K. Trivedi, Advocate with Shri Vishnu Kostha, Advocate for the petitioners.

Mr. Pankaj Shrivastava, Panel lawyer for Respondents No. 1 and 2.

Mr. Yashwant Tiwari, Advocate for Respondents No. 3 and 4.

ORDER

(2nd January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri J.**

1. The present petition filed by the petitioners under Article 226 of the Constitution of India challenges the validity of the orders dated 27.1.2000 (Annexures P/8 to P/40) whereby services of the petitioners have been terminated w.e.f. 29.2.2000 on the ground of irregularity in appointment because of overage/underage/lack of necessary qualifications.

2. The petitioners were appointed on various posts on various dates as follows :-

Srl No.	Name of Petitioner	Post	Date of Appointment
1.	Ku.Thanvarin Kaivart	Ashram Superintendent	31.01.1983
2.	Shri R. B. Rao	Accountant	18.2.1984
3.	Smt. Kamlesh	Teacher	1.3.1988
4.	Shri Basant Kumar Saraf	Teacher	1.7.191989
5.	Smt. Rajeshwari Baitharan	Assistant Teacher	25.2.1983
6.	Smt. Dhanlaxmi Kurup	Assistant Teacher	14.7.1993
7.	Shri Om Prakash Ogle	Assistant Teacher	1.12.1990

(235)

8.	Shri Rajendra Prasad Sah	Teacher	1.3.1994
9.	Smt. Sarswati Sao	Ashram Superintendent	24.3.1983
10.	Ku. Savitri Pandey	Teacher	1.1.1987
11.	Smt. Kamal Jain	Teacher	5.1.1983
12.	Shri Anil Basant Rao Dhote	Teacher	1.8.1989
13.	Smt. Satwanti Bhamra	Teacher	16.12.1988
14.	Ku. Malti Yadav	Ashram Superintendent	1.7.1987
15.	Shri Shiv Chandra Sah	Sanchalak, Kanya Ashram	1.4.1995
16.	Smt. Kasturi Soni(Saraf)	Assistant Teacher	7.5.1983
17.	Ku. Laxmi Uddey	Teacher	15.9.1992
18.	Shri Kaushal Kishore Pathak	Teacher	15.4.1988
19.	Shri Chingdu Ram Baghel	Lower Division Teacher	18.7.1988
20.	Smt. Jyoti Laxmi Naidu	Lower Division Teacher	26.10.1987
21.	Smt. Kamla Yadav	Cook	1.7.1980
22.	Smt. Kesharvati Patra	Arogya Sevika	1.3.1977
23.	Smt. Maitriya Beko Kashyap	Arogya Sevika	1.5.1987
24.	Smt. Rajmati Bande	Cook	30.6.1987
25.	Smt. Meena Yadav	Assistant Teacher	1.7.1992
26.	Shri Bhadroo Ram Kashyap	Lower Division Teacher	1.7.1989
27.	Shri Surya Kant Yadav	Lower Division Teacher	30.9.1989
28.	Smt. Ganga Nag	Assistant Teacher	30.6.1991
29.	Ku. Dropadi Durgam	Assistant Teacher	30.9.1989

(23C)

30.	Smt. Falguni Nag	Assistant Teacher	1.7.1988
31.	Smt. Lakhan Dei	Assistant Teacher	1.7.1989
32.	Smt. Sashi Bala	Assistant Teacher	1.8.1990
33.	Shri Kanwal Sai Nag	Assistant Teacher	1.7.1988

3. The petitioners were appointed in the Scheduled Castes, Scheduled Tribes and Back Ward Classes Department by the State Government. The Respondent No.3 vide order dated 22.1.1988 (Annexure P/1) passed by the Collector, Baster assumed administrative control of 30 Ashrams/Schools wherein some of the petitioners were appointed and some of them were already working, as stated above. It was provided in the order itself that the posts sanctioned in the said Ashrams/Schools would remain the same and 100% financial assistance will be granted to the said Ashrams/Schools through the Respondent No.3. Terms and conditions of the employees were stated to be governed by the policy of the State Government.

4. The Collector, District Baster, Jagdalpur vide letter dated 29.11.1990 (Annexure P/2), apprised to the Secretary/Respondent No.4 making it clear that the selection for appointment of teachers and other non-teaching staff will be made by a selection committee wherein the District Education Officer should be a necessary party. The appointments must be made after obtaining approval of the Collector. The Respondent No.4 was further directed to supply a list of teaching and non-teaching employees working in the Ashrams/Schools to the Divisional Deputy Commissioner, Tribal Welfare Department, Jagdalpur. The appointments of the petitioners were duly approved and the petitioners continued to work till a stereotyped notice dated 27.1.2000 was served to the petitioners terminating services of the petitioners w.e.f. 29.2.2000.

(237)

5. The High Court of Madhya Pradesh at Jabalpur wherein the petition was filed initially, while issuing notice granted interim order on 28.2.2000 to maintain status quo with regard to the services of the petitioners. Pursuant to the said order the petitioners have been continuing in services.

6. Learned counsel Shri K. K. Trivedi with Shri Vishnu Kostha, learned Advocate, appearing for the petitioners submitted that the institutions wherein the petitioners were appointed and have been working as teachers and non-teachers were fully financed by the Government. The appointments were made after verifying age, qualification of the petitioners for the posts. Services of the petitioners have been terminated with one month's notice without holding proper enquiry, so as to reach to the conclusion that some irregularity, say, overage, underage or lack of educational qualification, as pointed out, were found in cases of the petitioners. The respondents by stereotyped notice dated 27.1.2000 have terminated the services of all the petitioners without making any enquiry into the allegation of irregularity, if any, committed at the time of appointments of the petitioners. The petitioners were appointed for more than 10 years earlier, prior to the issuance of the impugned notice dated 27.1.2000. Learned counsel relied on decisions of Supreme Court in **Basudeo Tiwary V. Sido Kanhu University and others**[1], **Uptron India Ltd. V. Shammi Bhan & another**[2] and the decision of the High Court of Madhya Pradesh at Jabalpur in **S. K. Malviya and others Vs. State of M.P. and others**[3].

7. It was next contended that Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979 (hereinafter referred as 'Niyam, 1979') prescribes minimum age

([1]AIR 1998 S.C. 3261 [2]AIR 1998 S.C. 1681 [3]2002(1) M.P.L.J. 575)

(238)

and qualifications of teachers and other employees working in non-government educational institutions. In case of all the employees minimum age is prescribed and no maximum age has been prescribed.

8. Shri Yashwant Tiwari learned counsel appearing for the respondents No. 3 and 4 submitted that it is admitted fact that no enquiry was held to arrive at the conclusion that the petitioners who were working as teachers and other employees in the Ashrams/Schools were either under age or overage or lacked in required educational qualification for the posts at the time of their appointments. Learned counsel further submitted that the respondents No. 1 and 2 might have made some enquiry before directing the respondents No. 3 and 4 to take steps but the respondents No. 3 and 4 have not conducted any enquiry in the matter and the impugned notices/orders were passed at the behest of the Respondents No. 1 and 2 without applying any mind by the management of the respondents No. 3 and 4.

9. Shri Pankaj Shrivastava, learned Panel lawyer appearing for the respondents No. 1 and 2 submitted that the State Government had not filed any reply in the matter.

10. In this petition, notices were issued on 28.2.2000 and thereafter several opportunities were given to the respondents No. 1 and 2, notwithstanding various adjournments, no reply was filed by the respondents No. 1 and 2. On perusal of the relevant Rules learned counsel for the respondents No. 1 and 2 submitted that Niyam 1979 do not provide any maximum age limit. It was contended that the instructions were issued to the respondents No. 3 and 4 to examine cases of the petitioners about irregularity at the time of appointment in regard to the age and the qualification of the petitioners and

respondents No. 3 and 4 had issued impugned notice/order dated 27.1.2000 without holding an enquiry.

11. After hearing learned counsel for all the parties and perusing record, it is evident that no enquiry was conducted before issuing impugned notice/order dated 27.1.2000 as to whether the petitioners were underage, overage or lacked in educational qualification. Even the notices issued to the petitioners are stereotyped wherein, all the three above stated irregularities were mentioned in the notice and the relevant entries had been tick marked. It is well settled principle of law that in order to hold that the appointments were contrary to the provisions of law or irregularities were committed in selecting candidates, necessarily an enquiry has to be held before coming to such conclusion, particularly, in the present case where there is no allegation of enblock irregularity/illegalities in the selection process, which have been cancelled in its totality later on. In **Basudeo Tiwary's** case (supra) the Supreme Court has held as under:-

> *"12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorized manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, Rules or Regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry notice will have to be held and in holding such an enquiry the person whose appointment is under enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of*

240

Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's case (AIR 1991 SC 101). In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, Statute, Rule or Regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how S. 35(3) in this case will have to be read."

12. In **Uptron India Ltd.'s** case (supra) the Supreme Court has held that *"it is now well settled that the services of a permanent employee, whether employed by the Government, or Government company or Government instrumentality or Statutory Corporation or any other authority within the meaning of Article 12, cannot be terminated abruptly and arbitrarily, either by giving him a month's or three months' notice or pay in lieu thereof or even without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the Certified Standing Orders."*

13. In **S. K. Malviya's** case (supra) the High Court of Madhya Pradesh while considering the provisions of M.P.Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ko Padchyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 has held as under:-

"6. Under the said Act, Rules M.P. Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyon Ko Padachut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 are framed. Rule 12(3) of the said Rule reads as under:-

"12(3) (a) The Management shall after considering the representation, if any, made by the teacher or other employee, determine what action, if any, should be taken against the teacher or other employee and make a proposal for the order which it intends to pass.

(241)

(b) The Management shall thereupon forward the whole case along with its proposal of the Order intended to be passed to the Competent Authority for its approval and the Competent Authority shall not refuse to grant such approval except on one or more of the following grounds:-

(i) that there has not been, in the course of enquiry, proper or sufficient compliance of the procedure laid down in these rules.

(ii) That the provisions of the Act are likely to be defeated by the said Order; and,

(iii) That the said Order, on the face of it, is perverse."

7. Rule 12(3)(b) of the said Rules requires approval of the Competent Authority if an employee is required to be removed. The safeguard provided under the rule should be applied equally to removal of all approved teachers whether they are removed after enquiry or without conducting enquiry. A Division Bench of this Court in Bhartiya Vidya Mandir Vs. Smt. Pushpa Agarwal, 1993 (II) MPWN 37 held that services without the approval of the Competent Authority, cannot be terminated."

14. Learned counsel for the respondents have not denied the fact that no enquiry was held to come to the conclusion that any irregularity with regard to the age or eligibility condition was held in the case of any of the petitioners.

15. For the reasons stated above, the petition is allowed and the impugned orders dated 27.1.2000 (Annexures P/8 to P/40) are quashed.

In the peculiar facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur